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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

DEBRA D. COOPER, individually and on          )
behalf of all similarly situated,            )
                                             )
                Plaintiff,                    )          Civil Case No. 06-1018-KI
                                             )
        vs.                                   )          ORDER
                                             )
REGAN THOMASON and BRAD                       )
THOMASON, individuals; THOMASON               )
INC., an Oregon corporation; and DOES         )
1-5,                                         )
                                             )
                Defendants.                   )

        Jon M. Egan
        240 Sixth Street
        Lake Oswego, Oregon  97034-2931

                Attorney for Plaintiff

        Kevin H. Kono
        Jenna L. Mooney
        Davis Wright Tremaine LLP
        1300 S.W. Fifth Avenue, Suite 2300
        Portland, Oregon  97201

                Attorneys for Defendants

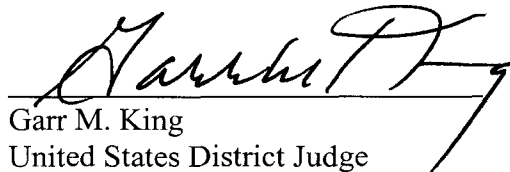Page 1 - ORDER

KING, Judge:

Plaintiff seeks summary judgment against several affirmative defenses filed by defendants.  I note for the record that during the conference on this motion, defendants agreed to voluntarily dismiss three affirmative defenses based on plaintiff's agreement that she bore the burden of proof on these items if she wanted the supplemented damages:  Second (no willful conduct, ORS 652.150); Fourth (penalty limitation for lack of written notice and no multiple violations); and Eighth (no willful conduct, 29 USC § 255(a)).

After considering the status of the case, I have concluded that we are not far enough along to strike affirmative defenses.  We have not settled on a final Complaint.  The issue of a possible collective or class action is stayed pending further litigation on the named plaintiff's claims.  Even if some of the defenses did not apply to the named plaintiff, they could apply to other putative class members.  Moreover, many actions proceed to resolution, even through trial, without a definitive ruling on the vast majority of affirmative defenses alleged in the Answer.  Defendants tend to allege many more defenses than they will ever seek to prove.  This is an area that counsel can continue to confer about in the future.

Accordingly, without ruling on the merits of the defenses, I deny Plaintiff's Motion for Summary Judgment (Affirmative Defenses) (#49).

IT IS SO ORDERED.

Dated this _____15th_____ day of March, 2007.

_____
Garr M. King
United States District Judge

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